IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

OP.No. 25279 of 2001(H)

PETITIONER:
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1. ALL INDIA FEDERATION OF LOTTERY TRADE & ALLIED INDUSTRIES (REPRESENTED BY ITS SECRETARY, W.SHAJAHAN, 25/28, OLD RAJENDAR NAGAR, NEW DELHI.

2. BEST & CO., 15/651, KUNNATHURMEDU, PALAKKAD.

BY ADV.SHRI. V.V.ASOKAN
ADV. SMT.S.AMINA

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT, TRIVANDRUM.

2. COMMISSIONER, COMMERCIAL TAXES, TRIVANDRUM.

3. DEPUTY COMMISSIONER, COMMERCIAL TAXES, THIRUVANANTHAPURAM.

4. DEPUTY COMMISSIONER, COMMERCIAL TAXES, PALAKKAD.

5. DEPUTY COMMISSIONER, COMMERCIAL TAXES, ERNAKULAM.

6. DIRECTOR OF LOTTERIES, DEPARTMENT OF LOTTERIES, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER - ADV. SHRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/02/2007, ALONG WITH OP NO. 26214, 26215, 33640 OF 2001, 20888, 23293 AND 27993 OF 2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 25279/01

ORDER ON CMP NO. 41179/2001 IN O.P. NO. 25279/2001

DISMISSED.

Sd/-

06/02/2007. (C.N.RAMACHANDRAN NAIR, JUDGE)

ORDER ON CMP NO. 41260/2001 IN O.P. NO. 25279/2001

DISMISSED.

Sd/-

06/02/2007. (C.N.RAMACHANDRAN NAIR, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	COPY OF THE RELEVANT PAGES OF KERALA FINANCE BILL, 2001.
EXT.P2	COPY OF THE RELEVANT PAGES OF THE BUDGET SPEECH OF THE FINANCE MINISTER OF THE STATE FOR 2001-2002.
EXT.P3	COPY OF THE AGREEMENT BETWEEN THE STATE OF ARUNACHAL PRADESH AND THE LOTTERY DISTRIBUTORS - M/S. N.V.MARKETING PVT.LTD.
EXT.P3(a)	COPY OF AGREEMENT BETWEEN M/S. N.V.MARKETING PVT. LTD AND THE 2ND PETITIONER.
EXT.P4	COPY OF THE REFERENCE ORDER OF THE HON'BLE SUPREME COURT IN CIVIL APPEAL NO.4552/99.
EXT.P5	COPY OF THE JUDGMENT OF THE BOMBAY HIGH COURT IN WIRT PETITION NO.129/2001.
EXT.P6	COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER TO THE GOVERNMENT.

// TRUE COPY //

PA TO JUDGE.

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. Nos. 25279, 26214, 26215, 33640 of 2001,
WP(C) Nos. 20888, 23293 & 27993 of 2003

Dated, this the 6th day of February, 2007

J U D G M E N T

In all these writ petitions, petitioners are challenging levy of licence fee in lieu of sale tax for lottery. While the petitioners relied on a decision of Supreme Court in ***Sunrise Associates Vs. Government of NCT of Delhi & Others***, reported in 145 STC 576, learned Government Pleader pointed out that, that judgment has only prospective effect and petitioners are not entitled to refund. The judgment of Supreme Court not only deals with levy of licence fee but is also against levy of sale tax on lotteries under the KGST Act and various statues of other States. In any case, since the Officer has not decided petitioners' claim based on the decision of Supreme Court, which was subsequently rendered after filing of these original petitions, these Original Petitions are disposed of directing the Assessment Officer to consider petitioners' claim for refund and for release of Bank guarantee with reference to decision of the Supreme Court and provisions of the Kerala Act and pass final orders after hearing petitioners within a period of three months from the date of production of a copy of the judgment by the petitioners. Assessment

Officer will specifically consider the contentions raised by the Government Pleader that State is entitled to recover tax or licence fee up-to-date of judgment of Supreme Court. Similarly, he will consider whether there is collection of tax or fee from customer or from principal and if so whether forfeiture is called for under Sec. 46A(1) of the KGST Act.

These writ petitions are disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg